



**MURRAY CITY MUNICIPAL COUNCIL
COUNCIL INITIATIVE WORKSHOP**

A Murray City Council Initiative Workshop was held on Thursday, June 24, 2010, in the Murray City Center, Conference Room #107, 5025 South State Street, Murray, Utah.

Members in Attendance:

Jeff Dredge	Council Chairman
Darren V. Stam	Council Vice Chairman
Jim Brass	Council Member
Jared A. Shaver	Council Member
Krista Dunn	Council Member

Others in Attendance:

Frank Nakamura	City Attorney
Michael D. Wagstaff	Council Executive Director
Janet M. Lopez	Council Office
Joe Watts	Citizen
Brandie Balken	Equality Utah
Zachery Fountain	Mayor's Office
Briant Farnsworth	Attorney's Office

Chairman Dredge called the meeting to order at 4:39 p.m. and welcomed those in attendance. He explained that this meeting is an opportunity for the Council to talk through issues that it may want to bring forward, and direct staff to take action on.

Discussion Item #1 Unlawful Discrimination Ordinance - Krista Dunn

Ms. Dunn commented that she had previously informed the Council members that she wanted to explore this issue, and sent everyone copies of the Salt Lake City ordinances on unlawful discrimination. She has similar ordinances from Ogden, and West Valley. Her viewpoint stems from Thomas Jefferson, who, when drafting the Declaration of Independence, declared that all men are created equal, and that all should be afforded some inalienable rights, which are life, liberty, and the pursuit of happiness. Many things fall into those areas. In creating legislation for the community, she feels that the Council has a responsibility to ensure that all citizens are afforded those same rights. She is not interested in a discussion about whether homosexuality is right, or moral, or whether gay marriages should be approved, she simply would like to afford the same rights to every citizen, and not take away any rights from citizens. The right to housing, and employment are critical when a person is trained and certified, and has the ability to perform the tasks as anyone else, or better.

It is Ms. Dunn's opinion that Salt Lake City, Salt Lake County, West Valley and Ogden have gone the right direction, with many other municipalities. She stated that she invited Joe Watts, an experienced proponent in this area, to take a few minutes to address the Council. Mr. Watts and his wife, have sent letters to each Council member and now he is present.

Mr. Watts related that he has known Krista's father-in-law, Marion Dunn, for some time, but has just met Ms. Dunn for the first time. He added that Mr. Dunn was a sports writer for the Salt Lake Tribune, while, Mr. Watts was a sports writer for the Provo paper.

Mr. Watts expressed his thanks to the City Council members for their broad-based service to the community. He knows that much effort and patience is necessary. His wife was unable to be in attendance but his comments are from the two of them, and he related their belief in government. He is pleased that the Council is considering anti discrimination laws to protect gays and lesbians from discrimination in housing, and the work place. He stated that the nation, state, and many communities are making great strides in overcoming historical bias, and prejudice against gays. Many Utah communities have already passed equal rights laws for gays. This cascade of acceptance for protection began when the LDS church endorsed such laws for Salt Lake City, Mr. Watts remarked. About twelve government jurisdictions have passed anti discrimination laws similar to the Salt Lake City ordinance.

Mr. Watts said that his daughter and her partner are lesbians, and have a son conceived by in-utero fertilization. In our present world, their son will be protected from work place discrimination, however, his two moms can be fired for being lesbians. That is simply not acceptable, Mr. Watts claimed. He said that he considers their family as much a family as any other family in America, and strongly believes they should have the same legal protection as any other family. Anyone who engages in commercial ventures that are subject to city, state, and federal regulations, should not be permitted to discriminate against gays and lesbians. He posed the rhetorical question: Why is this law needed? And he answered: discrimination is harmful, and is taking place, both subtle and blatant. It will help us build a more civil society. It should be done because it is required as part of the greatest moral code of all: do unto others, as you would have others do unto you. He closed with a reminder to each Council member that someone they know, and love is gay. It is a fact of society. These people should be able to live and enjoy the blessings of this great country. Mr. Watts urged the Council to adopt legislation similar to the Salt Lake ordinance. It is hard work, and he realizes they must sort out the legal issues that are involved. As a resident of Murray he would like to see this happen in the City. He appreciated the opportunity to address the Council in this comfortable situation.

Mr. Shaver commented that this involves the Utah Fair Housing Act. He said it is a legal matter, not an emotional one. He expressed his hesitancy to call it a gay or lesbian matter. He also stated that a homosexual couple that owned property could not discriminate against a heterosexual couple or their children. His preference would be to use language that did not use the terms gay or lesbian.

Ms. Dunn responded that she agreed with that philosophy, however, now there is protection for pretty much everyone, except gays and lesbians. She insisted that sometimes certain language must be inserted to make it effective. Ms. Dunn invited Brandie Balken to address the Council, prior to hearing from Mr. Nakamura.

Ms. Balken stated that she represented Equality Utah, and was present to ask the Council members to consider the implementation of two human rights ordinances. Last year, Salt Lake City created a template for two local ordinances that provide protections that reflect Utah's common values. A state wide poll completed by KSL showed that a full 69% of Utahans support these basic protections. The LDS church also supported the protections. Murray would not be alone in providing these protections, as other local governments in Utah have passed these ordinances. Across the country, 21 states, and more than 130 cities have passed work place and housing protections, including neighboring states Colorado, Nevada, and New Mexico. This is important in Murray, because three to five cases of discrimination based on sexual orientation or gender identity, are reported each month in Utah. Per capita, that rate is equal to those cases reported on gender discrimination. It is difficult to know if there is a problem in Murray, because people are afraid to report. There is no recourse, and no method for an outcome. Frequently, they can become stigmatized, and there is nothing to prevent the next landlord or employer from discriminating based on sexual orientation or gender identity. She insisted that if even one case of discrimination on sexual orientation existed, then that is too many.

Ms. Balken suggested that these ordinances are positive for economic development. They are a signal to employers outside the state that Murray is a welcoming community. Many large employers in Utah, such as, American Express, Overstock.com, Discover Card, Ebay, and Goldman Sachs all have internal nondiscriminating policies. When they look to expand or relocate their business, they look for communities that reflect the values of their company.

Ms. Balken explained that these ordinances are good policies that do not create quotas or special protections. These ordinances do not guarantee an outcome. They simply level the playing field of access. They stop employers and landlords from discrimination based on sexual orientation and gender identity, which all people have, much like race, age, gender, and religion, which are universal characteristics. The ordinances correspond with Utah and federal law, and do not interfere with Utah's right to work policy, or require religious entities or nonprofits to comply. They allow for common sense exemptions for small business, 15 employees or fewer. Small property owners, four or fewer units, are also exempt.

The ordinances are very simple to implement. Murray City would not need to create a new position to mediate this process, Ms. Balken noted. It can be overseen by the same person who handles other complaints. The process is four basic steps: complaint, investigation, mediation, and assessment of a fine. There is no granting of a private right to action with these ordinances.

Finally, Ms. Balken thanked the Council members for the opportunity to speak

with them, and for considering this issue that builds on all common values of nondiscriminating for all people. If the City Council implements these ordinances, she explained that it would speak volumes about the commitment to a community where all residents have equal access, which is upheld through very simple and common sense policy.

Mr. Nakamura stated that the term sexual orientation is not gay or lesbian, everyone has a sexual orientation. It can work in reverse, however, it is the language that would be used. The same language is used in the Salt Lake City ordinances. The government has the obligation to have a rational basis for any decisions made. The classification, according to constitutional law, when identified, becomes a different type of burden of proof. He feels it will require some work on the part of the City. It will not be as simple as stated. Some areas Murray is not involved in at all. He stated that Murray does not make any decisions that are not rational with a government purpose. Hiring, or not hiring, must have a job related reason to substantiate.

Mr. Nakamura suggested that it must be considered where Murray City is in terms of services and authority. He said he will look at how the ordinances interrelate to federal and state laws that are part of code now. He does not think it would be necessary to set up a commission, as Salt Lake City has done. The attorney's office will take an in depth look at the ordinances, and give the Council information on the various aspects involved.

Mr. Shaver mentioned two aspects to consider. One issue is the partnership with NeighborWorks that has recently been formed. Second, is a question. If a state code exists, why would Murray, or any other entity, need to create legislation on the same issue?

Mr. Nakamura responded that state codes and federal law establish a minimum. The Fair Labor Standards Act is an example. Murray can be more restrictive. The City has the authority to go further. The Council will need to establish discrimination and support it by the record. The concern is that federal law preempts what Murray can do. It is supreme.

Ms. Dunn said that, over time, the state has shown that it refuses to pass any legislation that protects all individuals. The reason that Park City, Salt Lake City, West Valley and others have taken this step is because the state has failed to do so. There are cases where people have been discriminated against in Utah. She feels that the City should not wait until someone is hurt to take steps to prevent it.

Mr. Shaver said that when enough of the communities have acted, then the state may adopt the minimal standards. Then Murray must follow that code.

Ms. Dunn added that the state recently commented that communities may follow the non discrimination ordinances of Salt Lake City, however, they should not go further.

Mr. Shaver clarified that it is implicit but not explicit. He observed that if Murray created the ordinances, then what ramifications could there be. There would need to be a forum, and consequences.

Mr. Nakamura said that it is very complex, and the Council needs research done to understand the ramifications. The easier issue is employment because such policies are already in place to deal with that. The attorney's office will look at all aspects, and ultimately the Council will have to have the record and basis for decisions. It may be as simple as changing existing ordinances that have classifications, or it may require more.

Mr. Brass stated that with NeighborWorks, and a new RDA that includes housing, the City is using tax dollars and other entities' tax dollars, to support a form of housing. This alone is a reason to look hard at the issue. Mr. Nakamura agreed that the City does have to consider this. Just as with low income housing, immigration can become a consideration.

Ms. Dunn expressed that she began thinking about this matter well over a year prior. Her decision to wait was precisely so that Murray would not have to stand alone in defense of the ordinances. A precedent has been set across the United States, and here in Utah.

Mr. Dredge asked if any other cities have experience in handling complaints so that Murray's legal department could research how that was handled. Additionally, he asked what the unintended consequences might be. Would another group come along asking for identification? He would like to have these ordinances be crafted just as generally as possible to prevent that.

Ms. Balken responded that the first ordinance passed in Salt Lake County in November, then Salt Lake City was enacted in April. The first complaint has been filed, and the investigation process is beginning in Salt Lake City. There will be data on that in about two months time. First, whether or not the complaint is valid must be established.

Regarding other groups that may come forward, Ms. Balken indicated that if any group can show, statistically, that they are being discriminated against in very basic rights, then she would encourage City leaders to protect them. It must be established that a need exists, that discrimination is occurring. Enumerated statistics exist, therefore, protected classes have been established. It has been done for age, race, religion, and situations that relate to pregnancy. If there is a rash of discrimination against any party, then a discussion on that should take place.

Mr. Shaver agreed with that thought, however, it must meet with other laws. Ms. Dunn remarked that the City would not bring something forward that could not stand up. With the other ordinances as models, the Council would only consider something that will be safe to vote upon. The question will always come down to whether it is a moral issue, because, in some minds, it is felt to be immoral, and the City should not protect

those people. Ms. Dunn stated that she would never protect something that is criminal, and whatever the City comes up with, will be something the Council can back.

Ms. Balken stated that she is especially proud of the process that Salt Lake City used to develop the ordinances over a two-year period. They brought business owners, religious persons, from many faiths, and property owners together to craft language that everyone was comfortable with. It was not pushed through. City leaders held an entire series of dialogs on discrimination experiences as part of the process. She feels this is why the state legislature has given its approval of these ordinances. Another great thing is that it gives local government the right to choose what is right for their community. City government is the most responsive form of government, closest to the people. Government closest governs best. Ms. Balken offered that if she can be of service in Murray, with those who have been discriminated against, or provide access to other city managers or council members who have walked through this process, she would be happy to do so. Summit County was the most recent passage. She would provide that support for Murray.

Ms. Dunn would like everyone to be heard before ordinances are drafted. It is important, and she respects everyone's opinion. Her motivation is that she does not want to see discrimination in this community against anyone. This group seems to be the one without protection.

Mr. Dredge summarized that federal and state laws protect age, race, religion, etc., and Murray would add protection of sexual orientation and gender identity. Further, he stated that none of the Council wants discrimination, however, it is the unintended consequences that are being considered. He does not want to put unintentional burdens on the legal department.

Mr. Brass went on the record to state that he was more than comfortable moving forward with these ordinances. Unintended consequences may not be avoidable in any action the Council takes. American Disabilities Act (ADA) is one that was very difficult for Mr. Brass when he built a building. Handrails and bathroom construction all had to be according to ADA rules, even in a private building, and he stated that his wife is in a wheelchair, therefore, she was quite comfortable with what they did. That said, the laws made it very difficult to build a building. Yet, many City buildings are not accessible. He agrees that everyone should have equal rights, and hopefully someday each group will not have to be listed.

Mr. Dredge brought up the Good Landlord program that is being considered, and with that there are some people that the City would want to discriminate against, especially, those who have a history of causing problems. It's a different situation, because those people are breaking laws.

Mr. Shaver expressed that he has seen lots of gay and lesbian discrimination in personal business ownership, and has tried to resolve that through councils in both

Seattle and Atlanta. He has nephews and nieces that are gay, and he loves them dearly.

Mr. Watts stated that his daughter was the director of Equal Rights Washington, until just recently. He thanked the Council, once again, for their support.

Mr. Nakamura asked if his office should go forward with preparations for the nondiscriminating ordinances.

Mr. Stam related that his only concern in going forward is to become known for doing something to favor a single group. If this protects all groups, he is for it, however, he does not want to create an issue by this action.

Ms. Dunn said that all other groups are specifically mentioned in state law. The City can say, we do not want discrimination against anybody, but we almost have to add this group to the list that is already identified.

It was the consensus of the Council to add this group to the other classes already protected.

Discussion Item #2 Council Position on the Murray Library Board -
Jared Shaver

Mr. Shaver distributed his thoughts in writing to the Council members regarding his position on the Library Board. It contained a list of items that the ex-officio representative is unable to do:

- Cannot vote on any issue
- Cannot alter, change or advance policy
- Cannot adjust, repeal or advance any financial decision of the Board (except as Council member during the budget process)
- Has no voice in the review process for employees
- Cannot alter, change or advance library materials, circulation, or curriculum
- Has no voice in how the Library is used

For clarification, Mr. Shaver indicated that he does not mind attending, however, nothing he says or does affect the outcome of issues. He has been told that because the Library can participate in financial matters, the Council oversight is important. There are other funds that have the same authority, and his thought is that, if that is the case, then there should be ex-officio members on some of the other City boards, such as Power, for example.

Mr. Brass and Ms. Dunn pointed out that the Library Board is a taxing entity. An elected official has always been present to give expertise and advice. Mr. Shaver stated

that he does not feel comfortable speaking on behalf of the Council. He refuses to do so. He said that the School Board is also a taxing entity.

Mr. Nakamura stated that the difference is that the City Council decides their budget, and sets the tax levy.

Mr. Brass noted that it is a separation of powers issue, and much of the list presented is administrative in nature. Attending meetings, and reporting to the Council is important, if, for example, an unauthorized path were being followed.

Mr. Nakamura added that a different statutory scheme applies to the Library, as opposed to the other departments. He would like to take a look at the statutes, and see if there is anything unique that mandates this type of representation. Trying to understand the relationship, and how it pertains needs to be investigated. Partly that is due to how the legislation is written, and it probably has not been changed in some time. It certainly predates the Mayor, Council form of government. He would need to look at state code to see if some mandatory provision exists. It is found in Title 10, with an entire set of provisions that address the library, beyond setting its tax levy. He will get an opinion on that.

Ms. Dunn stated that if it is not mandated, she is willing to consider whether it is really necessary.

Mr. Dredge adjourned the meeting at 5:30 p.m.

Janet M. Lopez
Council Office Administrator